

Unapproved

SALEM ZONING BOARD OF APPEALS
June 25, 2009

Present: Balavender, G., Alt.
Cole-Chu, L.
Diamond, S.
Kozlowski, S., Alt. - arrived at 7:45 pm

Absent: Bellandese, K.
Mullin, M.
Nortz, R.
Vacancy, Alt.

Guests: see attached.

CALL TO ORDER:

L. Cole-Chu, chairman, called the meeting to order at 7:23 pm.

SEATING OF ALTERNATE(S):

M/S/C (Diamond/Cole-Chu) to seat G. Balavender for K. Bellandese. Vote: approved unanimously.

Due to the fact that only three (3) Board members were in attendance at this time, and S. Kozlowski was on her way to the meeting, it was the Board's consensus to move items on the agenda and hear them at this time:

- APPROVAL OF MINUTES OF PREVIOUS MEETING(S)
- RECEIPT OF APPLICATION(S) TO SET PUBLIC HEARING DATE(S)

APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

1) May 28, 2009 - Regular Meeting

M/S/C (Diamond/Balavender) to approve the minutes of the May 28, 2009 Salem Zoning Board of Appeals Regular Meeting amended as follows:

Page 1 - at the bottom of the page, change *In the absence of L. Cole, Chu* to "In the absence of L. Cole-Chu

Vote: approved unanimously.

2) June 4, 2009 - Special Meeting

M/S/C (Balavender/Diamond) to approve the minutes of the June 4, 2009 Special Meeting of the Salem Zoning Board amended as follows:

Page 2 - in the *Vote*: in the motion to approve application #09-3, under *For denial* - , delete *Diamond* and replace with "Kozlowski".

Vote: approved unanimously

RECEIPT OF APPLICATION(S) TO SET PUBLIC HEARING DATE(S):

- 1) #09-5 Heller, Heller & McCoy, Authorized Agent for:
E. Smith, 146 Old Colchester Road, Salem, CT 06420
Appeal from the decision of the Zoning Enforcement Officer that
the determination that the dwelling constructed on the subject
real property at 146 Old Colchester Road is a seasonal dwelling.
Assessor's Map #21; Lot #41 146 Old Colchester Road

M/S/C (Balavender/Diamond) to set a public hearing for application:

- #09-5 Heller, Heller & McCoy, Authorized Agent for:
E. Smith, 146 Old Colchester Road, Salem, CT 06420
Appeal from the decision of the Zoning Enforcement Officer that
the determination that the dwelling constructed on the subject real
property at 146 Old Colchester Road is a seasonal dwelling.
Assessor's Map #21; Lot #41 146 Old Colchester Road

for Thursday, July 23, 2009, 7:00 pm, at the Salem Town Office Building, 270 Hartford Road.

Vote: approved unanimously.

The Board recessed for a while to
await S. Koslowski's arrival.

S. Koslowski arrived at 7:45 pm and the
Board took the following action:

M/S/C (Balavender/Diamond) to seat S. Koslowski for M. Mullin. Vote: approved unanimously.

PUBLIC HEARING(S):

- 1) #09-4 E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420
Appeal from the decision of the Zoning Enforcement Officer and
request for a variance of Section 3.14.3 (REAR LOTS -
setbacks) from fifty (50) feet required to thirty-nine (39) feet
requested for property at 605 Old Colchester Road.
Assessor's Map #14; Lot #14-B2 605 Old Colchester Road

Legal Notice read.

All Certificates of Mail received as per the Regulations.

R. & E. Laufer, applicants, appeared:

Explanation of their 5/11/09 letter (included in file) to the Board in
regard to the circumstances, which have brought them before the
Zoning Board of Appeals to construct an attached garage to their
home.

This is the only location where a garage can be placed.

Constraints are:

- To the rear of the house - well and a pond
- Front of the house - septic system
- The other side of the house - pond and wetlands

L. Cole-Chu, chairman,

Reviewed the information for the record and Board consideration submitted with the application.

The applicants agreed that it was what they had submitted.

Read into the record:

- Memo (6/17/09) from M. Chinatti, ZEO, in reference to the applicant's appeal from her decision concerning the fifty (50) ft. setback requirement for rear lots in the Salem Zoning Regulations:

Her decision was valid and requests the Board to uphold same.

- Memo of 6/25/09 from N. Reed Gustafson (Salem Sanitarian, though not so stated on the memo) relating the conversation he had with Mr. Laufer in regard to setbacks for his property at 605 Old Colchester Road.

The Board found the memo to be very vague.

(D. McTigue, Administrative Assistant, requested that it be stated on the record that though the memo is addressed to her, she did not request it.)

R. Laufer:

In regard to the 6/25/09 memo from Mr. Gustafson:

He went to the Building Department to see the ZEO in regard to his Building Permit application for which he needed a Zoning Permit.

The ZEO was not in her office that evening, but he did meet with V. Vesey, Salem Building Official and Mr. Gustafson, Sanitarian. (D. Bourdeau, Asst. Sanitarian, was also present, but did not participate in their conversation.)

He was never told to check with the ZEO.

He asked them both if they were sure the setbacks were twenty-five (25) feet and he was informed that that's what they were. In the end they said to him, "What do you want us to tell you, NO?"

Public Comments:

- P. & D. Dytko, 589 Old Colchester Road - abutting property owner to 605 Old Colchester Road; not in opposition to the application, but asked if there was a survey on file for the property and he would like to know what the garage will look like.

(Mr. Dytko was told that there was no survey at the meeting this evening, but a survey of the approved subdivision of the property was available in the Town Clerk's Office. Mr. Dytko reviewed the plot plan presented with the application and Mr. Laufer stated that he would show Mr. Dytko the blue prints for the garage, which he has at home.)

There were no further forthcoming comments from the public or the Board members. The Board took the following action:

M/S/C (Diamond/Balavender) to close the public hearing on application:

#09-4 E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420

Appeal from the decision of the Zoning Enforcement Officer and request for a variance of Section 3.14.3 (REAR LOTS - setbacks) from fifty (50) feet required to thirty-nine (39) feet required for property at 605 Old Colchester Road.

Assessor's Map #14; Lot #14-B2

605 Old Colchester Road

Vote: approved unanimously.

Board discussions:

- The Zoning Enforcement Officer did not err in her decision that the setbacks for rear lots were fifty (50) feet; it is so stated in the Salem Zoning Regulations.
- Review of the Zoning Board of Appeals Powers and Duties as described in Section 16.1 of the Salem Zoning Regulations:
Section 16.1.2 was discussed at length.

The Board first took action on the appeal from the decision of the Zoning Enforcement Officer:

M/S/F (Kozlowski/Diamond) to sustain the appeal from the decision of the Zoning Enforcement Officer for application:

#09-4 E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420

on the grounds that the Zoning Enforcement Officer erred in denying a Zoning Permit for the construction of a garage within fifty (50) feet of a boundary on a rear lot.

Vote: For approval - Balavender, Diamond. For denial - no one. Abstentions - none.

MOTION FAILED due to only two (2) votes.

M/S/D (Kozlowski/Balavender) to sustain the appeal from the decision of the Zoning Enforcement Officer for application:

#09-4 E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420

on the grounds that the Zoning Enforcement Officer erred in denying a Zoning Permit for the construction of a garage within fifty (50) feet of a boundary on a rear lot.

Vote: For approval - no one. For denial - Balavender, Cole-Chu, Diamond and Kozlowski. Abstentions - none.

MOTION DENIED.

Due to the denial of the appeal, the Board next took action on the request for a variance of Section 3.14.3 (REAR LOTS - setbacks):

M/S/C (Balavender/Diamond) to grant a variance of Section 3.14.3 (REAR LOTS - setbacks) from fifty (50) feet required to thirty-nine (39) feet requested for construction of an attached garage for property at 605 Old Colchester Road for application:

#09-4 E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420

on the grounds of the convenience of the applicants, as the Zoning Board of Appeals is within titled to consider, the exceptional difficulty of the application concerning the subject lot only (not all lots in the area or with like zoning), created in substantial part by an erroneous statement of a Town Official, albeit one acting in good faith, and substantial justice, and without substantial disharmony with the Zoning Regulations.

Vote: approved unanimously.

RECEIPT OF APPLICATION(S) TO SET PUBLIC HEARING DATE(S):

- 1) **#09-5 Heller, Heller & McCoy, Authorized Agent for:**

E. Smith, 146 Old Colchester Road, Salem, CT 06420

Appeal from the decision of the Zoning Enforcement Officer that the determination that the dwelling constructed on the subject real property at 146 Old Colchester Road is a seasonal dwelling.

Assessor's Map #21; Lot #41 146 Old Colchester Road

This item was moved to and acted upon during the first part of tonight's meeting.

APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

- 1) **May 28, 2009 - Regular Meeting**
2) **June 4, 2009 - Special Meeting**

These items were moved to and acted upon during the first part of tonight's meeting.

OLD BUSINESS:

- 1) **Election of Officers**

Due to the fact that only two (2) Regular Members were present this evening, the Board's consensus was to move this item to the July 23, 2009 Zoning Board of Appeals Regular Meeting agenda.

- 2) **Such other Old Business as may be proper**

There was no *OLD BUSINESS* this evening.

NEW BUSINESS:

- 1) **Discussion - public hearings, setting protocol, and Appeal application form**

It was the Board's consensus to move this item to the July 23, 2009 Zoning Board of Appeals Regular Meeting agenda.

2) Such other New Business as may be proper

There was no *NEW BUSINESS* this evening.

CORRESPONDENCE/ANNOUNCEMENTS:

There was no *CORRESPONDENCE/ANNOUNCEMENTS* this evening.

ADJOURNMENT:

M/S/C (Balavender/Diamond) to adjourn the meeting at 8:50 pm. Vote: approved unanimously.

D. McTigue, Administrative Assistant/Recording Secretary
L. Cole-Chu, chairman